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United States Supreme Court.

IN THE MATTER OF THE PETITION

OF

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,

FOR A WRIT OF CERTIORARI, ETC.,

TO THE

CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION, AND MOTION.

ROGER FOSTER,
Of Counsel for Petitioners,
35 WALL STREET,
Borough of Manhattan,
New York.

C. G. Burgoyne, Walker and Cooper Sts., N. Y.

To the Supreme Court of the United States of America.

The Petition of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER for a Writ of *Certiorari*, directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,
Libellants and Appellants,

AGAINST

The Steamship "KENSINGTON," her BOILERS, ENGINES, &c.; THE INTERNATIONAL NAVIGATION COMPANY,
Claimants and Appellants.

The said petitioners respectfully show to this Court as follows:

I. Your petitioners were, at the time of the commencement of this suit, citizens and residents of the State of New Jersey, and the claimant was at that time a foreign corporation, duly organized and existing under the laws of the State of New Jersey.

II. On or about the 9th day of December, 1897, the said The International Navigation Company entered into a contract with the libellants and petitioners herein for a valuable consideration to them paid by the libellants, whereby it agreed to and with your petitioners to convey and transport the libellants from the Port of Antwerp, in the Kingdom of Belgium, to the Port of New York, in the United States of America, by the said steamship "Kensington,"

and by said steamship to carry and transport with safety to said port of New York, and there deliver to the libellants, in good order and condition, the personal luggage or baggage of the libellants.

III. On or about the 11th day of December, 1897, the libellants took passage at Antwerp for New York upon said steamship "Kensington," then lying at said Antwerp, bound for said Port of New York, and, in pursuance of the terms of the contract between them and on or about said day last mentioned, delivered to the said The International Navigation Company, on board of said steamship at Antwerp, the wearing apparel and other personal baggage of libellants, to be transported as aforesaid by said steamship to said Port of New York, and there delivered to the libellants in good order and condition.

IV. Early in December, 1897, your petitioners engaged their passage from the claimant herein in Paris, France. At that time they paid part of their passage money, and received in return either a receipt or a ticket, which was not good until the balance of the purchase money was paid in Antwerp. In Antwerp they paid the balance of the purchase money. Neither of them read the ticket, and the day that they went on board the steamer they gave it up to the paymaster (Mrs. Bleecker, p. 15, fols. 57–58; p. 21, fols. 83–84; Miss Bleecker, p. 26, fols. 101, 102).

Your petitioners received in Antwerp a receipt for their baggage, which they also did not read, and which acknowledges the receipt of their baggage, "weight, contents and value unknown, and shipped "by the Red Star Line Steamers, subject to the conditions contained "in the Co.'s ticket and bill of lading. Red Star Line, Antwerp, "December, 1897. Caisse" (p. 56, fol. 222). They were not asked concerning the value of their baggage by any agent of the ship or of the shipowners (p. 24, fol. 96). The ticket so far as material is as follows:

"Paris, on the 2 Decr., 1897. This ticket is good for second-"cabin passage of the persons named in the margin, viz., * * * "by the British Steamship 'Kensington' from Antwerp, on the 11th "of December, 1897, at one o'clock P. M., unless prevented from "unforeseen circumstances." * * * In minute type, much smaller than what preceded: "Notice to passengers. It is a "condition upon which this ticket is granted, and is mutually "agreed, for the consideration aforesaid, that: * * *

"*(c)* The shipowner or agent are not under any circumstances "liable for loss, death, injury or delay to the passenger or his bag- "gage, arising from the act of God, the public enemies, fire, rob- "bers, thieves of whatever kind, whether on board the steamer or "not; perils of the seas, rivers or navigation; accident to or of "machinery, boilers or steam; collisions, strikes, arrest or restraint "of princes, courts of law, rulers or people, or from any act, neglect "or default of the shipowner's servants, whether on board the "steamer or not, or on board any other vessel belonging to the "shipowner, either in matters aforesaid or otherwise howsoever. "Neither the shipowner nor the agent is, under any circumstances, "or for any cause whatever or however arising, liable to any amount "exceeding 250 francs for death, injury or delay of or to any pas- "senger carried under this ticket. The shipowner will use all rea- "sonable means to send the steamer to sea in a seaworthy state, "and well-found, but does not warrant her seaworthiness.

"*(d)* The shipowner or agent shall not, under any circum- "stances, be liable for any loss or delay of or injury to passengers' "baggage carried under this ticket beyond the sum of 250 francs, "at which such baggage is hereby valued, unless a bill of lading "or receipt be given therefor and freight paid in advance on the "excess value at the rate of one per cent., or its equivalent, in "which case the owner shall only be responsible according to the "terms of the shipowner's form of cargo bill of lading in use from "the port of departure, &c. All questions arising hereunder are to "be settled according to Belgian Law."

V. Said steamship sailed from said port of Antwerp with your petitioners and their baggage on board on or about the 11th day of December, 1897, for the port of New York, and where said steamship arrived in safety on or about the 23d day of December, 1897, but owing to the careless, negligent, unusual, insufficient and improper manner in which your petitioners' baggage was stored, and the careless, negligent and insufficient manner in which other merchandise in said steamship was stored, and the want of proper care on the part of the master of said steamship, his officers and crew, and persons employed by him or them, the said personal baggage of your petitioners, which was of the value of four thousand dollars ($4,000), was in great part utterly ruined, whereby your petitioners were severally damaged in the sum of two thousand dollars ($2,000).

VI. On the 9th of February, 1898, the libel herein was filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, and on the same day the above-named steamship was levied upon.

VII. The claimant The International Navigation Company interposed an answer admitting all of the matters alleged in the libel except that it agreed to transport the said luggage with safety and to deliver it in good order and condition except so far as that duty is to be implied from its engagement in the aforesaid ticket, and that the said baggage was damaged by reason of insufficient and improper stowage, and alleged in said answer that the said baggage was injured by reason of the violence of the sea and unusual weather. For a further and independent defense it alleged therein that it was a part of the contract of transportation that all questions arising under the same should be settled according to Belgium law with reference to which the alleged contract was made, and that the said alleged contract contained a provision which was alleged to be valid under the law of Belgium to the effect that the shipowner should not be liable for loss or injury to the passenger or his baggage arising from perils of the sea, rivers or navigation, or from any act, neglect or default of the shipowner's servants. And for a further, separate and partial defense the claimant alleged in said answer that in and by said contract of transportation it was provided that the shipowner should not, under any circumstances, be liable for any loss or injury to passengers' baggage beyond the sum of two hundred and fifty francs, at which such baggage is valued, unless a bill of lading be given therefor, and freight paid in advance on the excess value of the rate of one per cent. or its equivalent, and the claimant avers that no bill of lading or receipt was given or freight paid on any value in excess of the sum of 250 francs by the libellants or by either of them.

VIII. On the 8th day of June, 1898, the above suit came on for trial before the Honorable Addison Brown, District Judge for the Southern District of New York, who, on or about the 1st day of July, 1898, filed his decision to the following effect: That the aforesaid ticket marked "Claimant's Exhibit A" was a contract; that the baggage was damaged by the negligence of the men in charge of the ship; that the clauses of the ticket which purported

to exempt the shipowner from liability did not apply, but that the clause limiting the liability to two hundred and fifty francs was applicable; and on the 29th day of October, 1899, a decree in accordance with said decision was made and entered herein awarding to your petitioners herein the sum of only $96.20, with interest and costs amounting to $51.59, making in all the sum of $151.59, instead of the sum of $4,000 with interest and costs.

Upon said trial your petitioners offered to prove the value of their said baggage, and that the value of the baggage of each of them exceeded in value the sum of $2,000; but the said District Judge excluded the testimony so offered by your petitioners. Said Judge, however, admitted testimony and evidence which showed that the value of the said baggage of each of your petitioners exceeded the sum of 250 francs (pp. 15–17, fols. 59–66).

IX. On or about the 29th day of October, 1898, your petitioners were duly allowed by the said Honorable ADDISON BROWN, District Judge for the Southern District of New York, an appeal from his said decree to the United States Circuit Court of Appeals for the Second Circuit, and it was ordered that a certified transcript of the record and all proceedings in the said case be forthwith transmitted to the said United States Circuit Court of Appeals.

X. A certified transcript of the record and of all proceedings in the case was duly so transmitted to the said United States Circuit Court of Appeals; and on or about the 21st day of April, 1899, the appeal by your petitioners from so much of the aforesaid decree which does not award to each of your petitioners severally damages in the sum of two thousand dollars, and from that part of said decree which limits the recovery of each of your petitioners for damages to the sum of forty-eight and $\frac{10}{100}$ dollars, came on to be be heard, and together with a cross-appeal by the claimants was argued by counsel for all parties before Judges WALLACE, LACOMBE and SHIPMAN. And thereafter, and on the 25th day of May, 1899, said Circuit Court of Appeals rendered and filed an opinion and decision written by Judge LACOMBE, which, among other things, held that the provisions of Section 2 of the Harter Act as to the limiting of liability by bills of lading or shipping documents does not apply to passenger tickets; that a stipulation in a passenger ticket which limits the liability of the carrier for loss of baggage to 250 francs, unless the passenger declares the value of his baggage in excess of

such amount, pays for the transportation of the excess and takes a bill of lading therefor, is not so unreasonable as to be void as against public policy; and that such a stipulation, though in terms limiting the liability of the "shipowner or agent" only, inures to the benefit of the ship itself. Said opinion and decision affirmed said decree of said District Court; and a mandate issued accordingly from said Circuit Court of Appeals to said District Court.

XI. On or about the 6th day of July, 1899, an order was made by the District Court of the United States for the Southern District of New York and entered in the office of the Clerk of said Court on the same day, which order directed that the libellants file with the Clerk of said Court on or before the 12th day of July, 1899, the mandate issued herein by the United States Circuit Court of Appeals for the Second Circuit; which mandate ordered, adjudged and decreed that the decree of said District Court be, and it thereby was, affirmed without interest or costs; and said order further directed that all proceedings upon the decree to be entered upon the said mandate be, and they thereby were, stayed until the 14th day of November, 1899.

XII. In accordance with said order, on the 10th day of July, 1899, the said mandate was duly filed in the office of the Clerk of the United States District Court for the Southern District of New York.

XIII. On or about the 20th day of July, 1899, without prejudice to the rights of your petitioners to apply to this Court for a writ of *certiorari*, an order was duly made by the United States District Court for the Southern District of New York and entered in the office of the Clerk of said Court on the same day, which, among other things, ordered, adjudged and decreed: that the decree of the said Circuit Court of Appeals be, and it thereby was, made the decree of the United States District Court for the Southern District of New York; and that the decree of said District Court entered herein on the 10th day of October, 1898, be, and it thereby was affirmed.

XIV. The questions and propositions of law involved in this case are substantially as follows:

I. Is the following clause, in a ticket purchased in Paris, France,

for the transport of a passenger from Antwerp, Belgium, to the City, County and State of New York, upon an ocean steamship, reasonable, valid and enforceable in a court of the United States assuming that the Belgian law does not forbid such a contract?

"The shipowner or agent shall not, under any circumstances, be "liable for any loss or delay of or injury to passengers' baggage "carried under this ticket beyond the sum of 250 francs, at which "such baggage is hereby valued, unless a bill of lading or receipt "be given therefor, and freight paid in advance on the excess value "at the rate of one per cent., or its equivalent, in which case the "shipowner shall only be responsible according to the terms of the "shipowner's form of cargo, bill of lading, in use from the port of "departure. All questions arising hereunder are to be settled ac-"cording to the Belgian law."

II. Does the following language, in a ticket purchased in Paris, France, for the transport of a passenger from Antwerp, Belgium, to the City, County and State of New York, upon an ocean steamship release the steamship from liability in a suit in admiralty *in rem* brought by the passenger, assuming that the Belgium law does not forbid such a contract?

"The shipowner, or agent, shall not, under any circumstances, "be liable for any loss or delay of or injury to passengers' baggage "carried under this ticket beyond the sum of 250 francs, at which "such baggage is hereby valued, unless a bill of lading or receipt "be given therefor, and freight paid in advance on the excess value "at the rate of one per cent., or its equivalent, in which case the "shipowner shall only be responsible according to the terms of the "shipowner's form of cargo, bill of lading, in use from the port of "departure. All questions arising hereunder are to be settled ac-"cording to the Belgium law."

III. Does the Harter Act—viz., Chapter 105 of the laws passed by the fifty-second Congress at its twentieth session, which is published in volume 27 of the statutes at large at page 445—apply to and regulate the liability in admiralty of an ocean steamship which transports from Antwerp, Belgium, to the City, County and State of New York, trunks, which are the property of a passenger upon said steamship when the contract between the passenger and the steamship, its owner and agent is embraced in a document called a ticket, in print and manuscript form, signed by the agents of the owners of the steamships and also in a receipt for said ticket in the following language:

" Total fr.

" Weight, contents and value unknown and shipped by the Red " Star Line steamer, subject to the conditions contained in the Co.'s " ticket and bill of lading.

" RED STAR LINE.
" CAISSE.

" Antwerp, Dec. 97.

All of said questions were duly raised and argued by your petitioners in said District Court and in said Circuit Court of Appeals.

XV. Concerning the clause in said ticket limiting the liability of the carrier, Judge LACOMBE said in his opinion, which is reported in Volume 94 of the Federal Reporter at page 888:

" However unreasonable would be a 'condition' attempting to " relieve the carrier entirely from liability in excess of some named " amount, there seems to be no impropriety in the carrier's requir- " ing the passenger to declare the value of the baggage in excess of " such named amount, to take regular bill of lading therefor, and " to pay for its transportation in proportion to its value, with the " proviso that, if he fails so to do, the carrier shall not be liable. " As to the question whether the sum named (250 francs) is too " small, the supreme court, in the Majestic, *supra*, intimated some " doubt as to the reasonableness of 10 pounds in the case of a first- " cabin passenger's baggage, but rendered no decision thereon. In " view of the circumstance that the condition complained of con- " tained an offer to carry the excess value under a regular bill of " lading, we are not prepared, in the absence of authority, to hold " that 250 francs is an unreasonable valuation for personal baggage " of a second-cabin passenger not thus carried."

XVI. In The Majestic, 166 U. S., 375, 386, this Court, speaking through the Chief-Justice of the United States, said concerning the following clause:

" Neither the shipowner nor the passage broker or agent is in " any case liable for loss or injury to or delay in delivery of lug- " gage or personal effects of the passenger beyond the amount of " 10 pounds unless the value of the same be declared at or before " the issue of this contract ticket, and freight at current rates for " every kind of property," with certain exceptions, " is paid;" that it was a " limitation which we must say *does not* strike us as

"*reasonable*, in view of the 'twenty cubical feet' of baggage for "each which the company had expressly contracted to carry."

In the case of Glovinsky vs. Cunard Steamship Co. (4 N. Y. Miscellaneous Reports, 266) the General Term of the City Court of New York held that the same limitation, to the amount of fifty dollars ($50), upon the liability of a transatlantic steamship company for damage to the baggage of a steerage passenger, when it was contained in a passenger ticket, was unreasonable and void. The sum of one hundred ($100) is the usual limitation for such damage in railroad tickets for short journeys in the United States.

XVII. And your petitioners further aver that the present case is one in which it is proper for this Court to issue a writ of *certiorari*, for the following reasons, among others:

1. Because, in the case of The Majestic, *supra*, this Court intimated that a provision in a passenger ticket exempting the carrier from all liability for loss of baggage beyond ten pounds is unreasonable.

2. Because the Circuit Court of Appeals held that there is no authority as to what is a reasonable limitation of liability for baggage in a passenger ticket.

3. Because the questions of law involved herein have not been passed upon by this Court.

4. Because the public interests and the interests of jurisprudence require the decision of this Court upon the questions of law involved herein.

5. Because, in view of the large number of persons using similar steamship tickets, said questions are of sufficient general, national and material importance and interest as to make it necessary that they should be determined by the Court of last resort.

6. Because there is a conflict in this respect between the law as expounded by said Circuit Court of Appeals and the rule observed in the State Courts held in the same district and circuit.

Wherefore your petitioners pray that this Honorable Court will be pleased to grant a writ of *certiorari* in this case to the Circuit Court of Appeals for the Second Circuit to bring up this case to this Honorable Court for such proceedings therein as to this Honorable Court may seem just.

Ezzine Stern Bleecker
Edwin F. Bleecker
Petitioners' Attorney

STATE OF NEW YORK, SOUTHERN DISTRICT OF NEW YORK, ss.:

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER, being duly sworn, say, and each for herself says: I have read the foregoing petition. The same is true to my own knowledge, information and belief; my knowledge is derived from the record in this case and from what has taken place in my presence and hearing in the court in which this action has been heard.

LIZZIE STEARNS BLEECKER.
ELSIE L. BLEECKER.

Sworn to before me this
20 day of September, 1899.
George E. Hammond

[NOTARIAL SEAL.] Notary Public.

I hereby certify that I have examined the foregoing petition, and in my opinion the petition is well founded, and that the case is one in which the prayer of the petitioners should be granted by this Court.

ROGER FOSTER,
Of Counsel,
For Petitioners.

" every kind of property, with certain exceptions, that it was a " limitation which we must say *does not*

SUPREME COURT

Of the United States of America.

In the Matter of the Petition of Lizzie Stearns Bleecker and Elsie L. Bleecker for a Writ of *Certiorari* directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of Lizzie Stearns Bleecker and Elsie L. Bleecker,
Libellants, Appellants,

AGAINST

The Steamship "Kensington," her Boilers, Engines, &c., The International Navigation Compann,
Claimants and Appellants.

Sirs—Please take notice that upon a certified copy of the transcript of the record herein and upon the annexed petition of Lizzie Stearns Bleecker and Elsie L. Bleecker, sworn to the 20 day of September, 1899, I shall move the motion hereto annexed before the Supreme Court of the United States at the Capitol in the City of Washington, District of Columbia, on Monday, the 16 day of October, 1899, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, and that I shall then and there move for such further relief in the premises as may be just.

Dated New York, September 21, 1899.

Yours, &c.,
Roger Foster,
Proctor, Attorney and Counsel for Libellants, Appellants,
35 Wall Street,
New York.

To Messrs. Biddle & Ward, Proctors and Counsel for Claimants, and
To The International Navigation Company.

SUPREME COURT

Of the United States of America.

In the Matter of the Petition of Lizzie Stearns Bleecker and Elsie L. Bleecker for a Writ of *Certiorari* directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of Lizzie Stearns Bleecker and Elsie L. Bleecker,

Libellants, Appellants,

against

The Steamship "Kensington," her Boilers, Engines, &c., The International Navigation Company,

Claimants and Appellants.

And now come the libellants, appellants above named, by Roger Foster, their counsel, attorney and proctor, and move this Court, upon a certified copy of the transcript of the record herein, and upon the annexed petition sworn to the 20 day of September, 1899, for a writ of *certiorari*, directed to the Circuit Court of Appeals for the Second Circuit and to the District Court of the United States for the Southern District of New York, to bring before this Honorable Court the case of Lizzie Stearns Bleecker and Elsie L. Bleecker, libellants and appellants, against the steamship "Kensington," her boilers, engines, etc., The International Navigation Company, claimants and appellants, recently decided by the Circuit Court of Appeals of the United States for the Second Circuit, and by the District Court of the United States for the Southern District of New York, for such proceedings therein as to this Court may seem just; and for such other and further relief in the premises as may be just.

No. 1466 XXX 15
Brf. of Foster for Petitioner.

Office Supreme Court U. S.
FILED
OCT 23 1899
JAMES H. McKENNEY,
Clerk.

THE

SUPREME COURT OF THE UNITED STATES

Filed Oct. 23, 1899.

In the Matter of the Petition of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER for a Writ of *Certiorari*, directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,

Libellants and Appellants,

AGAINST

THE STEAMSHIP "KENSINGTON," HER BOILERS ENGINES, &C.; THE INTERNATIONAL NAVIGATION COMPANY,

Claimants and Appellants.

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Memorandum in Support of Petition for Certiorari.

The questions which arise in this case, and which, as we submit, are of sufficient importance to require its review by this high tribunal, are as follows:

(1) Is the following clause in a ticket of a passenger upon an ocean steamship from Antwerp, Belgium, to New York City, which allows him 20 cubic feet of baggage, valid and enforceable in a court of the United States, assuming that the Belgian law does not forbid such a contract?

"The shipowner or agent shall not, under any circumstances, be "liable for any loss or delay of or injury to passengers' baggage

" carried under this ticket beyond the sum of 250 francs, at which " such baggage is hereby valued, unless a bill of lading or receipt " be given therefor, and freight paid in advance on the excess value " at the rate of one per cent. or its equivalent, in which case the " shipowner shall only be responsible according to the terms of the " shipowner's form of cargo bill of lading, in use from the port of " departure. All questions arising hereunder are to be settled ac- " cording to the Belgian Law " (Record, pp. 51-53).

(2) Assuming that this clause releases the shipowner and agent, does it release the steamship from liability in a suit *in rem* in admiralty ?

(3) Does the Harter Act (27 St. at L., p. 445), which forbids all covenants and agreements in bills of lading and shipping documents that lessen, weaken or avoid obligations for careful stowage and the liability for want of care in stowage, apply to a long document called a passenger ticket, containing more than a thousand words in print and manuscript, signed by the agents or the owners, and to a receipt accompanying the same, which refers to and describes it as the " Co.'s ticket and bill of lading " ? (Opinion, Record, pp. 61, 63, 64.)

I.

THE GRAVITY AND IMPORTANCE OF THESE QUESTIONS ARE SUFFICIENT TO NECESSITATE THE WRIT.

More than 350,000 passengers arrive yearly at the port of New York from Europe upon ocean steamships. Clauses of this nature are inserted in all their tickets. The proper construction and the validity of such clauses are questions of importance to each immigrant and to each American citizen returning from abroad.

II.

A CERTIORARI IS NEEDED TO COMPEL UNIFORMITY OF DECISION.

The clause in question is similar to a clause in the tickets of the White Star Line, concerning which this Court said, speaking through the Chief-Justice of the United States, in *The Majestic* (166 U. S., 375, 386); that it was a "limitation which we must "say does not strike us as reasonable, in view of the 20 cubi- "cal feet of baggage for each passenger which the company had "expressly contracted to carry." It is probable that the other Circuit Courts of Appeals, in similar cases, will follow the opinion of this Court rather than that of the Circuit Court of Appeals for the Second Circuit in the case at bar. Moreover, the State courts in the City of New York hold that a similar limitation is unreasonable and void.

See *Glovinsky vs. Cunard S. S. Company*, 4 N. Y. Misc., 266.

III.

We submit herewith a copy of our brief in the Circuit Court of Appeals, which contains the arguments in support of our contentions at length.

IV.

THE WRIT SHOULD BE GRANTED.

Respectfully submitted,
ROGER FOSTER,
Of Counsel.

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